

501.1 Beneficial
ownership of the
underlying shares
has been transferred.
Client advised

July 18, 1989

VIA TELECOPIER

Victor Cohen, Esq.
Pre-Merger Office
Federal Trade Commission
Room 303
7th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

This material may be subject to
the confidentiality provision of
Section 7A (h) of the Clayton Act
which restricts release under the
Freedom of Information Act

Dear Mr. Cohen:

Pursuant to our telephone conversation of July 10, 1989, I am writing on behalf of a client to inquire if a preacquisition notification is required to be filed pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended (the "Act"), in light of the following salient facts:

1. Structure of the Transaction. The shareholders of a U.S. corporation with net sales in its most recent annually prepared financial statement of \$25.8 million ("Company A") have contracted to sell on or about August 7, 1989 all of the outstanding capital stock of Company A to a Delaware corporation with total assets and net sales each less than \$2,000,000 ("Company B") for a purchase price of \$12,000,000. Company B is a wholly-owned subsidiary of a publicly-traded corporation organized under the laws of Great Britain ("Company C"). Company C has total assets and net sales which are each substantially less than \$100,000,000. Approximately sixty-eight percent of the stock of Company C is currently owned of record and beneficially by a private corporation organized under the laws of Great Britain which, we understand, has total assets in excess of \$100,000,000 ("Company D").

2. Dilution of the Controlling Interest of the Ultimate Parent. In order to finance the proposed acquisition, on August 3, 1989, Company C will have granted irrevocable and contractually binding rights ("Rights") to purchase additional newly issued shares of Company C stock ("New Stock") to existing Company C shareholders and the public. The New Stock is required

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to be issued by Company C pursuant to a firm commitment underwriting agreement and the New Stock will be issued and paid for irrespective of market conditions. Company D has irrevocably sold its entitlement to the Rights allocated to its current shares. As a result of the issuance of the New Stock, Company D's interest in Company C's stock will automatically be diluted to less than 50% of the then outstanding voting securities of Company C. Company C is required to "issue" the New Stock by entering the names of the owners of the Rights onto the stock register of Company C (it is proposed that it will do so on August 23, 1989), but it could not properly issue the New Stock prior to August 23, nor could it be required to do so.

3. Characteristics of the Rights. Although the holders of the Rights will have no voting or dividend rights until the New Stock is issued and registered in Company C's books on or about August 23, 1989, as a practical matter the New Stock can be treated as outstanding as of August 3, 1989. On August 3, 1989, the London Stock Exchange will be advised that Company D has had its interest diluted by the New Stock to less than a 50% position in Company C. From and after August 3, 1989, the New Stock will have been fully paid for and the Rights evidencing the New Shares will trade on the London Stock Exchange at the same price as Company C's shares. Therefore, ownership of the Rights as of August 3, 1989 creates virtually the same incidents of ownership and possibilities of economic gain or loss as record ownership of Company C stock.

4. Right to Elect Directors. Under English law, Directors can, broadly, only be elected by the existing Board or by a resolution passed by simple majority at a shareholders meeting. As a technical matter, Company D will continue to hold 68.3% of the "issued" shares on Company C's stock register between August 7, 1989 and August 23, 1989. If a shareholders meeting were to be held during that period and a resolution presented for the election of new directors, Company D could, by casting all of its votes, ensure that such a resolution would be passed. However, Company D does not have the power to call a meeting during that period. In fact, Company D has only the right, under English law, to require Company C's directors to convene a shareholders meeting within three months of the date of the request. In other words, if Company D submits a request for a shareholders meeting on August 7, 1989, the earliest date it could exercise its "power" to call such a meeting and elect directors would be November 6, 1989. Even if Company C's directors were to assist Company D by convening a meeting on the earliest permissible day

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on which a meeting could legally be held (unless shareholders holding 95% of Company C's shares consented to an earlier meeting), that day would be August 23, 1989, at which time Company D will no longer hold either of record or beneficially more than 50% of Company C's outstanding shares. Company C's directors are not obliged to act in this way, nor does the slightest suggestion or implication exist that they would.

5. Questions.

- A. Does the temporary record ownership of 68% of the stock of Company C by Company D between August 7, 1989 and August 23, 1989 require a filing under the Act pursuant to 16 C.F.R. § 801.1(b), on the basis that Company D is the ultimate parent of the acquiror with assets in excess of \$100,000,000?
- B. If a filing would be required under the afore-described circumstances, would a filing still be required if Company D enters into a legally binding, irrevocable contract with Company C, effective during the period between August 7, 1989 and August 23, 1989, not to exercise its voting rights with respect to more than 49% of the outstanding stock of Company C?

Because of the proximity of the proposed acquisition date of August 7, 1989, I would appreciate your prompt response to our questions within the three- or four-day time period which you suggested in our telephone conversation. Please contact me if you have any questions or require further factual information or clarification.

Thank you for your assistance in this matter.

Very truly yours,

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